

John D. Fiero (CA Bar No. 136557)  
PACHULSKI STANG ZIEHL & JONES LLP  
150 California Street, 15<sup>th</sup> Floor  
San Francisco, California 94111-4500  
Tel: 415/263-7000; Facs: 415/263-7010  
Email: jfiero@pszjlaw.com

Brad T. Summers (OSB No. 911116)  
David W. Criswell (OSB No. 925930)  
BALL JANIK LLP  
101 SW Main Street, Suite 1100  
Portland, Oregon 97204-3219  
Tel: 503/228-2525; Facs: 503/295-1058  
Email: tsummers@balljanik.com

Attorneys for Debtor Arlie & Company

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON**

<p>In re</p> <p>ARLIE &amp; COMPANY,</p> <p style="text-align: center;">Debtor.</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p>ARLIE &amp; COMPANY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>PIONEER ASSET INVESTMENT LIMITED, a Hong Kong corporation,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 10-60244-aer11</p>   <p>Adv. Proc. No. 11-06018</p> <p><b>PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (1) DECLARING PIONEER'S LIEN VOID, AND (2) SUSTAINING PLAINTIFF'S OBJECTION TO PIONEER'S PROOF OF CLAIM</b></p>
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**LBR 7007-1(a)(1)(A) CERTIFICATION**

Pursuant to Local Bankruptcy Rule 7007-1(a)(1)(A), the undersigned counsel for Arlie & Company, the debtor and debtor-in-possession herein (the "Debtor" or "Plaintiff")<sup>1</sup> certifies that

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<sup>1</sup> All capitalized terms not defined herein shall have the meanings set forth in the accompanying Memorandum of Points and Authorities.

the parties have met and conferred in good faith to resolve this dispute through telephone communications and emails, but have been unable to resolve the dispute. Plaintiff's counsel has requested that Pioneer Asset Investment Limited ("Pioneer") withdraw its alleged claim of holding a security interest in five parcels of real property located in Hilo, Hawaii (the "Hawaii Parcels") based on controlling legal authorities, and that Pioneer accept alternative treatment under Plaintiff's proposed plan of reorganization. Pioneer has refused to do so. On February 24, 2011 and on March 2, 2011, Plaintiff's counsel advised Pioneer that it would seek summary judgment based on undisputed facts to be heard on or before the hearing scheduled regarding sale of the Hawaii Parcels.

### **MOTION FOR SUMMARY JUDGMENT**

Plaintiff brings this motion for summary judgment ("Motion") pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure and section 362(a) of the Bankruptcy Code because the undisputed facts demonstrate that Pioneer's mortgage purporting to encumber the Hawaii Parcels was recorded after Plaintiff filed its petition for bankruptcy and in violation of the automatic stay. As a matter of law, Pioneer's claim is unsecured. Accordingly, Plaintiff seeks summary judgment (1) declaring Pioneer's lien void, and (2) sustaining Plaintiff's objection to Pioneer's proof of claim alleging a security interest in the Hawaii Parcels.

This Motion is supported by the accompanying Notice of Motion, Memorandum of Points and Authorities, the Concise Statement of Material Facts, the Declarations of Suzanne K. Arlie, John J. Musumeci, and John D. Fiero and exhibits thereto, and any other evidence properly before the Court, prior to or, at any hearing on the Motion.

WHEREFORE, Plaintiff requests that the Court enter an order:

1. Granting the Motion and determining that the Purported Lien is void;
2. Sustaining Plaintiff's objection to the alleged secured status of Pioneer's Claim;
- and
3. Granting such other and further relief as is just and proper.

DATED: March 3, 2011.

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ John D. Fiero  
John D. Fiero (CA Bar No. 136557)

-and-

BALL JANIK LLP  
David W. Criswell (OSB No. 925930)  
Brad T. Summers (OSB No. 911116)

## CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing

*Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

*Memorandum of Points and Authorities in Support of Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

*Concise Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

*Declaration of Suzanne Arlie in Support of Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

*Declaration of John J. Musumeci in Support of Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

*Declaration of John D. Fiero in Support of Plaintiff's Motion for Summary Judgment (1) Declaring Pioneer's Lien Void, and (2) Sustaining Plaintiff's Objection to Pioneer's Proof of Claim*

on the following party:

**by CM/ECF:**

- JOHN D ALBERT on behalf of Creditor Siuslaw Bank  
(darlene@albertandtweet.com, [beth@albertandtweet.com](mailto:beth@albertandtweet.com))
- JOHN F BARG on behalf of Interested Party John Musuemci (jfb@bcltlaw.com, [cgw@bcltlaw.com](mailto:cgw@bcltlaw.com))
- LINDA F CANTOR on behalf of Debtor Arlie & Company ([lcantor@pszjlaw.com](mailto:lcantor@pszjlaw.com))
- CONRAD K CHIU on behalf of Creditor Fifth Third Bank  
([cchiu@pryorcashman.com](mailto:cchiu@pryorcashman.com))
- BRADLEY S COPELAND on behalf of Creditor Summit Bank  
(bcoopeland@agsprp.com, [soconnor@agsprp.com](mailto:soconnor@agsprp.com))
- JOHN D FIERO on behalf of Debtor Arlie & Company (jfiero@pszjlaw.com, [ocarpio@pszjlaw.com](mailto:ocarpio@pszjlaw.com), [ksuk@pszjlaw.com](mailto:ksuk@pszjlaw.com), [azaragoza@pszjlaw.com](mailto:azaragoza@pszjlaw.com))

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AND (2) SUSTAINING PLAINTIFF'S OBJECTION TO PIONEER'S PROOF OF CLAIM

- MICHAEL W FLETCHER on behalf of Creditor Tonkon Torp LLP  
(michael.fletcher@tonkon.com, [tammy.brown@tonkon.com](mailto:tammy.brown@tonkon.com))
- THOMAS A HUNTSBERGER on behalf of Counter-Claimant Mark Roberts  
([tom@tahpc.com](mailto:tom@tahpc.com))
- THOMAS A HUNTSBERGER on behalf of Defendant Mark Roberts  
([thuntsberger@ecf.epiqsystems.com](mailto:thuntsberger@ecf.epiqsystems.com))
- P REBECCA KAMITSUKA on behalf of U.S. Trustee US Trustee, Eugene
- TEDDY M KAPUR on behalf of Debtor Arlie & Company (tkapur@pszjlaw.com,  
slee@pszjlaw.com )
- MICHAEL P KEARNEY on behalf of Debtor Arlie & Company  
(mpk@kearneyatlaw.com, [mholley@agsprp.com](mailto:mholley@agsprp.com))
- ALBERT N KENNEDY on behalf of Creditor Tonkon Torp LLP  
(al.kennedy@tonkon.com, [leslie.hurd@tonkon.com](mailto:leslie.hurd@tonkon.com), [larissa.stec@tonkon.com](mailto:larissa.stec@tonkon.com))
- JUSTIN D LEONARD on behalf of Debtor Arlie & Company (jleonard@bjllp.com,  
[jweisenbach@balljanik.com](mailto:jweisenbach@balljanik.com))
- JOHN CASEY MILLS on behalf of Creditor Umpqua Bank  
(casey.mills@millernash.com, [brenda.hale@millernash.com](mailto:brenda.hale@millernash.com))
- WILSON C MUHLHEIM on behalf of Creditor Century Bank ([ecf@mb-lawoffice.com](mailto:ecf@mb-lawoffice.com))
- P SCOTT McCLEERY on behalf of Creditor Gartland, Nelson, McCleery, Wade &  
Walloch, P.C. (scottm@gartlandnelsonlaw.com, [kassiea@gartlandnelsonlaw.com](mailto:kassiea@gartlandnelsonlaw.com))
- FRANK F MCGINN on behalf of Creditor Iron Mountain Information Management,  
Inc. ([ffm@bostonbusinesslaw.com](mailto:ffm@bostonbusinesslaw.com))
- ANDREW P PARKS on behalf of Creditor Summit Bank (aparks@agsprp.com,  
[lstevenson@agsprp.com](mailto:lstevenson@agsprp.com))
- TERESA H PEARSON on behalf of Creditor Umpqua Bank  
(teresa.pearson@millernash.com,  
[lisa.conrad@millernash.com](mailto:lisa.conrad@millernash.com);[brenda.hale@millernash.com](mailto:brenda.hale@millernash.com))
- DANIEL P PEPPEL on behalf of Creditor Bank of America (dpeppel@pjcs.com,  
[dawnanderson9@pjcs.com](mailto:dawnanderson9@pjcs.com), [jsteinert@pjcs.com](mailto:jsteinert@pjcs.com))
- JACKSON SCHMIDT on behalf of Creditor Bank of America  
(jacksonschmidt@pjcs.com, [dawnanderson9@pjcs.com](mailto:dawnanderson9@pjcs.com);[jsteinert@pjcs.com](mailto:jsteinert@pjcs.com))
- DOUGLAS R SCHULTZ on behalf of Creditor Committee Unsecured Creditors  
Committee (schultz@gleaveslaw.com, [kirsten@gleaveslaw.com](mailto:kirsten@gleaveslaw.com))
- BRAD T SUMMERS on behalf of Debtor Arlie & Company  
(tsummers@balljanik.com, [akimmel@balljanik.com](mailto:akimmel@balljanik.com))

- US Trustee, Eugene ([USTPRegion18.EG.ECF@usdoj.gov](mailto:USTPRegion18.EG.ECF@usdoj.gov))
- PATRICK W WADE on behalf of Creditor Washington Federal Savings ([hhecfb@hershnerhunter.com](mailto:hhecfb@hershnerhunter.com))
- HEATHER M WALLOCH on behalf of Creditor Gartland, Nelson, McCleery, Wade & Walloch, P.C. ([heatherw@gartlandnelsonlaw.com](mailto:heatherw@gartlandnelsonlaw.com), [kassiea@gartlandnelsonlaw.com](mailto:kassiea@gartlandnelsonlaw.com))
- GILBERT B WEISMAN on behalf of Creditor American Express Bank FSB ([notices@becket-lee.com](mailto:notices@becket-lee.com))
- DOUGLAS R WILKINSON on behalf of Counter-Defendant 2911 Tennyson Avenue, LLC ([doug@thorp-purdy.com](mailto:doug@thorp-purdy.com), [skelley@thorp-purdy.com](mailto:skelley@thorp-purdy.com))
- ARNOLD M WILLIG on behalf of Creditor Bank of America ([arnie@hackerwillig.com](mailto:arnie@hackerwillig.com), [debbie@hackerwillig.com](mailto:debbie@hackerwillig.com), [donna@hackerwillig.com](mailto:donna@hackerwillig.com), [eshea@hackerwillig.com](mailto:eshea@hackerwillig.com), [alena@hackerwillig.com](mailto:alena@hackerwillig.com), [kristen@hackerwillig.com](mailto:kristen@hackerwillig.com))

and on the following parties by mailing a full, true and correct copy in a sealed first-class postage prepaid envelope, addressed to the parties listed below, and deposited with the United States Postal Service at San Francisco, California on the date set forth below:

David E. Bomar  
Balzhiser & Hubbard Engineers, Inc.  
100 W 13th Ave  
Eugene, OR 97401

Mike Broadsword  
Eugene Sand & Gravel  
POB 1067  
Eugene, OR 97440

Gregory Brokaw  
Rowell Brokaw Architects, PC  
1 East Broadway #300  
Eugene, OR 97401

John C Fisher  
767 Willamette St #201  
Eugene, OR 97401

James R. Hanks  
JRH Transportation Engineering  
4765 Village Plaza Lp #201  
Eugene, OR 97401

Jonathan Polland  
Rethink LLP  
465 California St #310  
San Francisco, CA 94104

Micheal Roberts  
1919 Myers Road  
Eugene, OR 97401

Jerry Vicars  
Fabrication & Mechanical Group Inc  
POB 42173  
Eugene, OR 97404

WmThomas Construction  
POB 2409  
Florence, OR 97439

John C Fisher  
c/o Mark Roberts  
767 Willamette St #201  
Eugene, OR 97401

Pioneer Asset Investment Limited  
c/o Wilson C. Muhlheim, Esq.  
88 East Broadway  
Eugene, OR 97401

DATED: March 3, 2011

/s/ Casey Stevens

Casey Stevens